IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

CRL.A.No. 2459 of 2007()

AGAINST THE ORDER DATED 03/11/2007 IN MC. 9/2007 IN SC.862/2006 of SESSIONS COURT, KOZHIKOE

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APPELLANT: RESPONDENTS.

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1. IBRAHIMKUTTY, S/O. MOIDEEN MUSALIAR,
   AGED 60 YEARS, KUNNATH HOUSE, ERAVATOOR AMSOM,
   EDAVARAD DESOM, KOYILANDY TALUK.

2. AMMED, S/O. POKKER,
   AGED 37 YEARS, KUTHIRAPETTIYIL MEETHAL
   THAMASSIKKUM KUNIODI MEETHAL, CHERUVANNUR VILLAGE
   KUTTOTH DESOM, KOYILANDY TALUK.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: PETITIONER.

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR , J

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CRL.R.P. NO. 2459 of 2007

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Dated this the 17th day of December, 2007.

JUDGMENT

Heard both sides.

2. The appellants were the sureties of the 3rd accused by name Anas in S.C. No. 862/2006 on the file of the Sessions Court, Kozhikode. Consequent on the failure on the part of the A3 to appear before the Sessions Court, proceedings were initiated against the appellants under Section 446 Cr.P.C. To the show cause notice issued to them as to why the bond amount of Rs.25,000/- per surety should not be ordered to be paid as penalty, both of them had no explanation to be submitted except stating that A3 for whom they stood as sureties, has gone abroad. Thereupon, the Sessions Judge reduced the penalty to 15,000/- each granting remission for the balance bond amount. The said order was passed on 03.11.2007. It is the said order which is assailed in this appeal.

3. Even though the accused slipping out of the country without the knowledge or support of the sureties, may not

constitute sufficient cause justifying reduction of the penalty amount, since the Apex Court had shown indulgence towards the sureties in **Mohammed Kunju v. State of Karnataka** (1999 (4) Crimes 320), I see no reason as to why the appellants should not be shown some leniency in the matter of penalty. Having regard to the fact that they are stated to be in impecunious circumstances, the penalty payable by each of the appellants is reduced to Rs.7,500/- (Rupees seven thousand and five hundred only) which shall be deposited before the trial court within one month from today failing which they shall be proceeded against in accordance with law and if ultimately the penalty is found to be irrecoverable the defaulting surety shall undergo imprisonment in a civil prison for a period of three months.

The Crl.Appeal is disposed of as above.

V. RAMKUMAR, JUDGE.

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